

United States Senate

COMMITTEES:
ARMED SERVICES
COMMERCE, SCIENCE, AND
TRANSPORTATION
JUDICIARY
VETERANS' AFFAIRS

February 3, 2021

VIA ELECTRONIC TRANSMISSION

Jane Nishida
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

Dear Acting Administrator Nishida,

I write to ask for information related to potential conflicts of interest stemming from the prior work of Avi Garbow, who was recently named Senior Counselor to the Administrator. Specifically, I am looking for clarity with regard to his ongoing relationship with his previous employer Patagonia and his work lobbying on behalf of other organizations, such as the Organic Trade Association and its political action committee (PAC).

Before joining EPA, Mr. Garbow was the Environmental Advocate at Patagonia. The company has funded over \$100 million to outside groups,¹ including Sierra Club,² Earthjustice,³ and National Resources Defense Council,⁴ all entities with pending litigation before EPA. At Patagonia, Mr. Garbow was closely involved in litigation challenging the last Administration's policies with respect to EPA rulemaking and land use at Bears Ears National Monument.⁵ On April 24, 2020, spearheaded by Mr. Garbow, Patagonia filed an amicus brief in support of a challenge to EPA's Affordable Clean Energy Rule, enacted under the Clean Air Act.⁶ On August 20, 2020, Patagonia moved to intervene in a lawsuit seeking invalidation of EPA's Navigable Waters Protection Rule, issued pursuant to the Clean Water Act.⁷

On January 27, 2021, EPA publicly announced Mr. Garbow's appointment as Senior Counselor to the Administrator.⁸ However, after joining the agency, Mr. Garbow was still serving as opposing counsel of record in a case against EPA. His withdrawal from the case did not occur until January 29, 2021—two full days after EPA announced he was joining the agency.⁹

Pursuant to 5 C.F.R. 2635.502, employees must take appropriate steps to avoid the appearance of having their impartiality questioned in the performance of their official duties. According to Justice Department ethics guidelines, an employee is normally recused for a one-year period from a matter in which their former employer whom they provided services to within the previous year is a party or represents a party.¹⁰ Mr. Garbow should therefore be recused from all of the matters in which Patagonia is a party. For the purpose of avoiding any questions about his impartiality, Mr. Garbow should also be recused from all of the matters in which Patagonia-funded outside entities are a party.

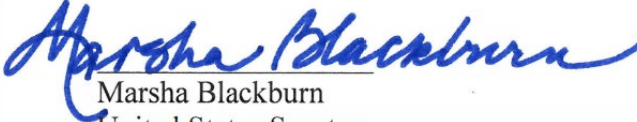
Additionally, there are concerns presented by Mr. Garbow's continued political activity while serving as a federal employee.¹¹ As of February 3, 2021, Mr. Garbow appears to still serve on the Board of Directors for the Organic Trade Association (OTA), a 501(c)(6) organization that lobbies lawmakers and government officials on policies, laws and regulations affecting the organic industry.¹² OTA runs a PAC that donated primarily to Democratic candidates in the 2020 election,¹³ and the OTA Board controls the composition of the PAC's Committee leadership.¹⁴ Under EPA Office of General Counsel's Hatch Act guidelines, political appointees may not in general solicit, accept or receive political contributions.¹⁵

EPA must take steps to assure the American people that political appointees who represent the top agency leadership are following the highest ethical standards and making unbiased decisions when carrying out their responsibilities. Therefore, I ask that you provide the following requested information by February 10, 2021.

1. A copy of Mr. Garbow's ethics pledge.
2. A copy of Mr. Garbow's recusal statement.
3. A copy of Mr. Garbow's financial disclosure documents, detailing his prior lobbying and legal work with Patagonia and the Organic Trade Association, along with any associated financial compensation.
4. The date Mr. Garbow began employment at EPA under this Administration.
5. Any official or unofficial arrangements Mr. Garbow has for returning to Patagonia after finishing his EPA role, including the date of his return and his expected compensation.

Thank you for your attention to this important matter. I look forward to your response.

Sincerely,


Marsha Blackburn
United States Senator

cc: Sean O'Donnell
Inspector General
U.S. Environmental Protection Agency Office

Robin H. Richardson
Acting Associate Administrator for Congressional Affairs and Intergovernmental
Relations
U.S. Environmental Protection Agency Office

Justina Fugh
Senior Counsel for Ethics
U.S. Environmental Protection Agency Office

Enclosures

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- ¹ Patagonia Action Works, <https://www.patagonia.com/actionworks/about/>.
- ² Patagonia Action Works: Sierra Club, <https://www.patagonia.com/actionworks/grantees/sierra-club/>.
- ³ Patagonia Action Works: Earth Justice, <https://www.patagonia.com/actionworks/grantees/earthjustice/>.
- ⁴ Patagonia Action Works: National Resources Defense Council, <https://www.patagonia.com/actionworks/grantees/natural-resources-defense-council/>.
- ⁵ Jason Mark, *Trading in a Suit and Tie for Fleece*, Sierra Magazine (May 23, 2019), <https://www.sierraclub.org/sierra/trading-suit-and-tie-for-fleece>. While the Bears Ears lawsuit was filed against the U.S. Department of Interior and Department of Agriculture, one issue involved uranium mining's environmental impact, an issue which EPA handles. Earthjustice Press Release (Jul. 26, 2019), <https://earthjustice.org/news/press/2019/trump-administration-new-plan-for-bears-ears>.
- ⁶ Ryan Van Bibber, *Patagonia and Columbia Join Forces to Fight Trump*, Outside Online (May 5, 2020), <https://www.outsideonline.com/2412745/patagonia-columbia-trump-administration-clean-air>. Brief for Patagonia Works and Columbia Sportswear as Amicus Curiae Supporting Petitioners (Apr. 24, 2020), *American Lung Ass'n et al. v. EPA*, No. 19-1140 (D.C. Cir. Jan. 21, 2021), <https://patagonia.medium.com/brief-of-amici-curiae-patagonia-works-and-columbia-sportswear-company-in-support-of-state-and-4346dec3d785>.
- ⁷ Sam Lungren, *Patagonia Will Sue Trump Administration over Clean Water Act*, The MeatEater (Sep. 21, 2020), <https://www.themeateater.com/conservation/environmental-issues/patagonia-will-sue-trump-admin-over-clean-water-act>.
- ⁸ EPA News Releases (Jan. 27, 2021), <https://www.epa.gov/newsreleases/epa-welcomes-additional-members-biden-harris-leadership-team>.
- ⁹ Notice of Withdrawal of Counsel, Attorney Avi Garbow for Intervenor Plaintiff Patagonia Works, ECF No. 44, Jan. 29, 2021, *Puget Soundkeeper All. et al v. EPA et al.*, No. 2:20-cv-00950 (W.D. Wash.).
- ¹⁰ Government Ethics Outline, U.S. Department of Justice (Jul. 5, 2017), <https://www.justice.gov/jmd/government-ethics-outline> (last accessed on Feb. 3, 2021).
- ¹¹ 5 U.S.C. § 7323. See also U.S. Office of Special Counsel, Federal Employee Hatch Act Information, <https://osc.gov/Services/Pages/HatchAct-Federal.aspx#tabGroup31tabGroup12>.
- ¹² Organic Trade Association, Board of Directors: Avi Garbow, <https://ota.com/about-ota/board-directors/Avi%20Garbow> (last accessed on Feb. 3, 2021).
- ¹³ Center for Responsive Politics, Organic Trade Association, Candidate Recipients, 2020 Cycle, <http://www.opensecrets.org/political-action-committees-pacs/organic-trade-assn/C00492132/candidate-recipients/2020>.
- ¹⁴ Organic Trade Association, Learn More About Organic PAC, <https://ota.com/about-ota/ota-political-action-committee/learn-more-about-organic-pac>.
- ¹⁵ U.S. Environmental Protection Agency, Office of General Counsel/Ethics, Political Activities and Federal Employees (Sep. 2012), <https://www3.epa.gov/ogc/IPACourse/Hatch%20Act%20chart%20Sept%202012.pdf>.

COVID-19: Get the latest updates on how we're supporting organic farms and businesses through the Coronavirus crisis. ([/covid-19](#))

([/](#))

[CONTACT \(\[/CONTACT-OTA\]\(#\)\)](#) | [MEDIA \(\[/FOR-THE-MEDIA\]\(#\)\)](#)

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> Board of Directors

Board of Directors

Avi Garbow

Patagonia Works



COMMUNITY RELATIONS

COMMITTEE A nationally recognized environmental leader, lawyer and advocate, Avi currently serves as Patagonia Works' Environmental Advocate, helping to sharpen and strengthen the company's voice and vision on environmental and conservation issues as **Patagonia**

(<https://www.patagonia.com>) pursues its mission: being in business to save the home planet. Avi is committed to using his role as Environmental Advocate to help ensure that the organic standards and certification are protected and strengthened, and that the many benefits of organic production are widely recognized and valued.

Our Work

Our Mission and Vision (/about-ota/mission)

Bold Steps Initiatives to Advance Organic (https://ota.com/bold-steps-advance-organic)

Annual Report (https://ota.com/about-ota/2019-year-review-look-ahead)

Bylaws (/about-ota/bylaws)

The Organic Center (https://www.organic-center.org/)

Ways to Support (/about-ota/ways-support)

Our Leadership

Board of Directors (/about-ota/board-directors)

Member Councils, Task Forces and Forums (/about-ota/member-councils-forums-task-forces)

Organic Political Action Committee (/OrganicPAC)

Organic Leadership Awards (/about-ota/organic-leadership-awards)

- › Submit a Nomination (/about-ota/organic-leadership-awards/honorees/submit-nomination-march-30)
 - › Honorees (/about-ota/organic-leadership-awards/honorees)
-

Connect with our Expert Staff (/about-ota/staff)

CONTACT

Headquarters

444 N. Capitol St. NW
Suite 445A
Washington D.C. 20001
T: 202-403-8520

Locations

Washington, D.C.
Brattleboro, VT
Santa Cruz, CA
Corvallis, OR

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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,
SIERRA CLUB, IDAHO CONSERVATION
LEAGUE, and MI FAMILIA VOTA,
Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, ANDREW
WHEELER, in his official capacity as
Administrator of the United States
Environmental Protection Agency, UNITED
STATES ARMY CORPS OF ENGINEERS,
and R.D. JAMES, in his official capacity as
Assistant Secretary of the Army for Civil
Works,
Defendants.

No. 2:20-cv-00950-JCC

NOTICE OF WITHDRAWAL

TO: Clerk of the Court

AND TO: ALL COUNSEL OF RECORD

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Avi S. Garbow of Patagonia, Inc. (Admitted *pro hac vice*) hereby withdraws as attorney for Plaintiff-Intervenor Patagonia in the above-entitled action.

1 Pursuant to LCR 83.2(b)(3), Cascadia Law Group PLLC, Stephen J. Tan, and
2 Meghan Gavin; and Robert D. Tadlock of Patagonia, Inc. continue to represent Plaintiff-
3 Intervenor Patagonia in this action.

4 This withdrawal of Mr. Garbow shall be effective immediately.

5 DATED this 29th day of January, 2021.

6 PATAGONIA, INC.
7 Avi S. Garbow, (Admitted *pro hac vice*)
8 Patagonia, Inc.
9 259 W. Santa Clara Street
10 Ventura, CA 93001
11 Telephone: (800) 638-6464
12 Email: Avi.Garbow@patagonia.com
13 Withdrawing Attorney

14 CASCADIA LAW GROUP PLLC

15 By s/ Stephen J. Tan
16 Stephen J. Tan, WSBA No. 22756
17 Meghan E. Gavin, WSBA No. 50124
18 Cascadia Law Group PLLC
19 1201 Third Avenue, Suite 320
20 Seattle, WA 98101
21 Telephone: (206) 292-6300
22 Facsimile: (206) 292-6301
23 Email: stan@cascadialaw.com;
24 mgavin@cascadialaw.com

25 PATAGONIA, INC.
26 Robert D. Tadlock, (Admitted *pro hac vice*)
Patagonia, Inc.
259 W. Santa Clara Street
Ventura, CA 93001
Telephone: (800) 638-6464
Email: Robert.Tadlock@patagonia.com

Attorneys for Plaintiff-Intervenor
Patagonia Works

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2021, the foregoing was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send notification of said filing to the attorneys of record that have, as required, registered with the Court's system.

DATED this 29th day of January, 2021 at Seattle, Washington.

By s/ Stephen J. Tan
Stephen J. Tan, WSBA No. 22756
Cascadia Law Group PLLC
1201 Third Avenue, Suite 320
Seattle, WA 98101
Email: stan@cascadialaw.com



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

The Honorable Marsha Blackburn
United States Senate
Washington, D.C. 20510

Dear Senator Blackburn:

On behalf of the U.S. Environmental Protection Agency (EPA), thank you for your letter dated February 3, 2021, that inquired into federal ethics obligations applicable to Avi Garbow.

Mr. Garbow returned to federal service at EPA on January 22, 2021 and received his initial ethics training on January 26, 2021. He was appointed as a Special Government Employee (SGE) as defined under 18 U.S.C. § 202(a). An SGE serves up to 130 days in a 365-day period and is subject to the federal ethics laws and regulations as they apply to that type of appointment. Because an SGE is not a political appointment, Mr. Garbow is not required to sign an ethics pledge. *See* Executive Order 13989, sections 1 and 2(b) (ethics pledge applies to political appointees). He is, however, required to file a financial disclosure report. In his case, the type of report he completed is confidential and therefore exempt from release to the public. *See* 5 U.S.C. app. § 107. He has submitted his confidential report and EPA's Alternate Designated Agency Ethics Official has reviewed and certified it.

If you have any further questions, please contact me, or your staff may contact Kristien Knapp in EPA's Office of Congressional and Intergovernmental Relations at Knapp.Kristien@epa.gov or (202) 564-3277.

Sincerely,

**JAMES
PAYNE**

Digitally signed by JAMES
PAYNE
Date: 2021.04.07
17:27:04 -04'00'

James Payne
Designated Agency Ethics Official
Deputy General Counsel for Environmental
Media and Regional Law Offices